IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.932 OF 2005

Kondiba Laxman Javir (Vhalar)
since deceased through legal
heirs Appaso Kondiba Javir
& Others ..Appellants

versus

Dasu alias Sandipan Shripati Javir
& Others ..Respondents

Mr.Uday Warunjikar for the Appellant
Mr.T.S.Ingale for the Respondent No.1
Mr.V.V.Tapkir for Respondent Nos.2 and 3 absent
Mr.H.G.Wakshe for Respondent No.4.

Coram : S.R.Sathe, J.
Dated : 10th March, 2006

P.C.

1. By consent heard finally at admission stage.

2. Plaintiff filed suit for partition and separate possession of his 1/2 share against his cousin brothers. It was opposed by the defendants 1 and 2 mainly on the ground that the plaintiff is not their relative and not concerned with the suit property. Their uncle Shripati was unmarried and the suit filed by plaintiff is false. The said suit is decreed in favour of the plaintiff. Being aggrieved by the same the defendants 1 and 2 filed the first appeal and the same also came to be

dismissed. Thus, both the courts below gave concurrent finding of fact that the defendants 1 and 2 and plaintiff are cousin brothers.

3. Shri Warunjikar, learned Advocate for the Appellant defendant has urged only one point before me. According to him the finding recorded by the courts below on the point that plaintiff Dasu is son of Shripati Javeer is perverse and against the evidence on record.

4. At the outset it must be mentioned that the plaintiff has stated that his name is Dasu alias Sandipan Shripati Javeer. No doubt at one point of time it is also stated that his name is Dattu alias Dasu alias Sandipan Shripati Javeer. A feeble attempt is made on behalf of the Defendant to show that the birth extract which is produced at Exhibit 69 by the plaintiff also indicates the name as Dattu. However, I have carefully perused the said Extract. I have no slightest hesitation to hold that the name appearing therein is Dasu and not Dattu. The first word ___ is very clear, if it would have been Dattu then the first word appearing on the said extract would be ___ and not ___. So,

merely because the word "___" is somewhat blur it cannot be said that the name is Dattu. So, the name appearing in the birth extract exhibit 69 is Dasu Shripati Javeer. At this stage it must be mentioned that there is no dispute that Javeer belongs to **Holar** Caste and as such they are also known by the said caste.

5. It is the contention of the Defendant that Shripati Javeer was in fact unmarried and as such there was no question of Shripati having any son either by name of Dasu or Sandipan or Dattu. In order to substantiate this contention, the defendant has mainly relied on the voters list produced by them at exhibit 105 wherein the name shown is Sandipan Krishna Gezge. However, it must be noted that mere production of this voters list wherein name Sandipan Krishna Gezge nowhere matches with the plaintiffs name i.e. Sandipan Shripati Javeer is of no use. The defendant has not adduced any evidence to show that the plaintiff is actually called by name Sandipan Krishna Gezge. Nor defendants have adduced any evidence to show that they are actually two different persons by name Sandipan alias Dasu Shripati Javeer and Sandipan Krishna Gezge. Shri

Warunjikar, learned Advocate for the defendant also submitted that the defendant had infact applied for getting birth extract of the plaintiff to the concerned village officer by virtue of Exhibit 86. However, the defendants were informed that there is no such person born in the village at the relevant time. So, this also in fact lends support to plaintiff's version and negatives the contention of the defendant. It must be borne in mind that the defendants 1 and 2 have not produced any birth extract showing the name as Sandipan Krishna Gezge. Further, it is pertinent to not that the defendant had asked for the birth extract of Sandipan Krishna Gezge. When admittedly the name of present plaintiff was not entered in the birth extract as Sandipan Shripati Javeer, there was no possibility of having any such extract in the village record. So, if really the defendant had an intention to find out as to whether the person by name Dasu @ Sandipan Shripati Javeer has actually been born he should have applied accordingly. Instead he made an application that birth extract of Sandipan Krishna Gezge be issued. Under such circumstances, the voters list in question is certainly of no use to prove that Dasu i.e. Plaintiff is not the son of

Shripati Javeer.

6. From the perusal of the record it does appear that it is the case of the plaintiff that his mother Harubai started residing with Krishna Gezge. Not only that but when she left her matrimonial home and went to Krishna Gezge, she had also taken with her the present plaintiff i.e.Dasu alias Sandipan Javeer. Both the parties have not adduced any specific evidence on the point as to whether after the plaintiff went alongwith her mother and started residing in the family of Krishna Gezge, thereafter, all along in his future life he was identified or known as Sandipan Krishna Gezge. In the absence of any such evidence both the courts below have rightly given due weightage to the birth extract produced by the plaintiff as well as the oral testimony of the plaintiff's witness i.e. maternal uncle of plaintiff who has categorically stated that his sister i.e. Harubai, mother of Sandipan had started residing with Krishna Gezge. There is no birth extract to show that the person by name Krishna Gezge has any son by name Dasu or Sandipan. The statement of the Plaintiff's witness that Dasu alias Sandipan Gezge is the son of Shripati Javeer is not

shattered in the cross examination. So, both the courts below have rightly considered the entire evidence and by no stretch of imagination it can be said that the finding recorded by the courts below is perverse. Shri Walavalkar, learned Advocate for the Defendant Nos.1 and 2 has drawn my attention to a case **AIR 1959 SUPREME COURT 914 Dolgobinda Paricha V/s. Nimai Charan Misra** wherein the Apex Court has held that when the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. This proposition is not disputed and cannot be disputed. In fact, besides producing birth extract the plaintiff has also examined his aged maternal uncle who was having special knowledge about both the families namely of Plaintiff and Krishna Gezge. He has also stated that the plaintiff is the son of Shripati. So, considering all this evidence on record both the courts below rightly reached to the conclusion that plaintiff is son of Shripati and defendants are his cousin brothers and therefore decreed the suit accordingly.

. In view of this, there is no necessity to interfere with the findings recorded by both the courts below. Hence the appeal is dismissed in limine with costs.

. As requested by the learned Advocate for the respondent-plaintiff, the record and proceeding be sent to the trial Court immediately.

(S.R.Sathe, J.)